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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

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7 STEPHANIE GORDON,

8 Plaintiff,

9 v.

10 NANCY A. BERRYHILL, Acting  
Commissioner Social Security,

11  
12 Defendant.

Case No. 2:18-cv-00775-APG-GWF

**REPORT AND RECOMMENDATION**

13 Application To Proceed In Forma Pauperis  
14 (#1) And Complaint For Review Of A Social  
15 Security Disability Or Supplemental Security  
Income Decision (#1-1)

16 This matter is before the Court on Plaintiff's Application to Proceed *In Forma Pauperis*  
17 (ECF No. 1), and Complaint for Review of a Social Security Disability or Supplemental Security  
18 Income Decision (ECF No. 1-1), filed on April 27, 2018.

19 **BACKGROUND**

20 On March 16, 2018, the Plaintiff filed her initial Application to Proceed *in Forma*  
21 *Pauperis* (ECF No. 1) and Complaint for Review of a Social Security Disability or Supplemental  
22 Security Income Decision (ECF No. 1-1) in Case No. 2:18-cv-00492-JCM-GWF. The Court  
23 granted Plaintiff's request to proceed *in Forma Pauperis* but dismissed Plaintiff's Complaint  
24 without prejudice, instructing the Plaintiff to file an amended complaint by April 11, 2018 in  
25 accordance with the deficiencies noted therein. ECF No. 3 at 3. On April 27, 2018, Plaintiff  
26 filed a second Application to Proceed *In Forma Pauperis* (ECF No. 1) and Complaint for  
27 Review of a Social Security Disability or Supplemental Security Income Decision (ECF No. 1-  
28 1), in Case No. 2:18-cv-00775-APG-GWF against the same party, and alleging the same conduct

1 which gave rise to the initial complaint filed in Case No. 2:18-cv-00492-JCM-GWF. Plaintiff is  
2 advised that she cannot have two cases simultaneously open that refer to the same events and  
3 same party. Therefore, the latter Case No. 2:18-cv-00775-APG-GWF will be closed.

#### 4 **DISCUSSION**

5 Plaintiff's complaint filed in Case No. 2:18-cv-00775-APG-GWF, suffers from the same  
6 deficiencies as the first complaint, filed in Case No. 2:18-cv-00492-JCM-GWF. Plaintiff has  
7 failed to prove that she has exhausted all administrative remedies available to her prior to filing a  
8 complaint with district court, pursuant to 42 U.S.C. § 405(g). Generally, a plaintiff who seeks  
9 judicial review has received an: (1) unfavorable decision from an Administrative Law Judge  
10 ("ALJ"); (2) has requested a "reconsideration" of the denial; and (3) then appealed the ALJ's  
11 decision to the Appeals Counsel, who must then deny Plaintiff's request for an appeal. It is only  
12 at that point in which the ALJ's decision becomes a final agency decision that is ripe for judicial  
13 review pursuant to 42 U.S.C. § 405(g).

14 Plaintiff's instant complaint filed in Case No. 2:18-cv-00775-APG-GWF (ECF No. 1-1)  
15 and Exhibits<sup>1</sup> (ECF No. 3) indicate Plaintiff has indeed received an unfavorable ruling from the  
16 ALJ, and subsequently requested a "reconsideration" of the denial. However, Plaintiff's  
17 complaint falls short of alleging an appeal has been filed with the Appeals Counsel. Because the  
18 administrative remedies required under the Act have not yet been exhausted, the Court will  
19 dismiss this complaint, with leave to amend, to provide Plaintiff another opportunity to give the  
20 Court the necessary information. Accordingly,

21 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*  
22 (ECF No. 1), filed on April 27, 2018 is **denied** as moot.

23 **IT IS FURTHER ORDERED** that Plaintiff's Amended Complaint for Review of a  
24 Social Security Disability or Supplemental Security Income Decision (ECF No. 1-1) is  
25 dismissed, without prejudice with leave to amend. If Plaintiff elects to file an Amended  
26 Complaint she is instructed to do so by **June 4, 2018**.

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27 <sup>1</sup> The Court has reviewed Plaintiff's Exhibits regarding the "Complaint of Judicial Misconduct or Disability" filed on  
28 April 30, 2018, (ECF. No. 3) and finds the exhibits are unrelated to her complaint for judicial review. Accordingly,  
these exhibits were not taken into consideration in this Order.

1 **RECOMMENDATION**

2 **IT IS RECOMMENDED** that the Clerk of the Court be instructed to close Case No.  
3 2:18-cv-00775-APG-GWF and transfer all filings therein to Case No. 2:18-cv-00492-JCM-  
4 GWF.

5 **IT IS FURHTER RECOMMENDED** that Plaintiff be instructed to make all future  
6 filings, related to her request for judicial review, under Case No. 2:18-cv-00492-JCM-GWF.

7 Dated this 4th day of May, 2018.

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10 GEORGE FOLEY, JR.  
UNITED STATES MAGISTRATE JUDGE

11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must  
13 be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court  
14 has held that the courts of appeal may determine that an appeal has been waived due to the  
15 failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985).  
16 This circuit has also held that (1) failure to file objections within the specified time and (2)  
17 failure to properly address and brief the objectionable issues waives the right to appeal the  
18 District Court's order and/or appeal factual issues from the order of the District Court. *Martinez*  
19 *v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452,  
20 454 (9th Cir. 1983).